

The only issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of and in the course of employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

1. The preliminary hearing Order should be affirmed.
2. This claim hinges on claimant's credibility. Claimant testified on two occasions before Judge Barnes and it is implicit in the Order that the Judge found claimant credible. At this juncture of the claim, the Board does not disagree.
3. Respondent and its insurance carrier contend the videotape presented at the December 5, 2000 hearing accurately portrays claimant's job as a balloon tester. But claimant disputes that contention and testified that it did not accurately portray her job as it did not demonstrate how far she would have to bend over when "clip testing" or the overhead motions she had to perform when "burst testing" the balloons. Claimant testified, in part:

It [the videotape] don't really show you when you are clip testing them how far you have to bend over and it don't show the motions that you really have to go through when you burst test them because your hand is up overhead level (indicating). The bend, the slight, the bend, you can't just stand there straight and push that button and read the gauges.<sup>1</sup>
4. Both Dr. Robert Eyster and Dr. C. Reiff Brown watched the videotape prepared by respondent and its insurance carrier. Both doctors noted that claimant's job, as represented on the videotape, would not aggravate her back. But claimant's testimony is uncontroverted that the videotape fails to accurately portray her job. Therefore, the doctors' causation opinions must be considered in light of that uncontroverted testimony.
5. An injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.<sup>2</sup> The test is not whether the accident caused the condition, but whether the accident aggravated or accelerated a preexisting condition.<sup>3</sup>
6. At this juncture of the claim, the Board finds claimant's testimony persuasive that the prolonged standing, bending and reaching in her job has aggravated the preexisting

---

<sup>1</sup> Preliminary Hearing, March 27, 2001; p. 8.

<sup>2</sup> *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>3</sup> *Woodward v. Beech Aircraft Corporation*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

degenerative disc disease in her low back. Therefore, claimant is entitled to receive workers compensation benefits for that aggravation.

7. As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.<sup>4</sup>

**WHEREFORE**, the Board affirms the April 6, 2001 preliminary hearing Order entered by Judge Barnes.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2001.

---

BOARD MEMBER

c: James B. Zongker, Wichita, KS  
Christopher J. McCurdy, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director

---

<sup>4</sup> K.S.A. 44-534a(a)(2).